VINA ARVIND KHADPE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (ALP) NO.2168 OF 2023
(Application for Leave to Appeal)

M/s. Bhagwandas Khushaldas
through its authorised representative,
Mahendra Ratilal Patel … Applicant
Versus
M/s. Hakimi Construction and ors. … Respondents

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Mr. Gaurav Parkar a/w Mr. Pratik Bhitale for Applicant.
Mr. Bhushan Walimbe a/w Mr. Mayank Tripathi & Mr. Varad Sherlekar for Respondents.
Ms. Sharmila Kaushik, APP for the Respondent-State.

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CORAM : M.M. SATHAYE, J.
DATE : 01 OCTOBER, 2026

P.C. :

1. Physical copy of the Application is taken on record. Heard learned Counsel for the parties. Perused the record.

2. The Applicant is the original complainant and the Respondent Nos.1 to 3 are original accused nos. 1, 4 & 5.

3. By this Application, the Complainant is seeking leave to file appeal challenging the Judgment and Order of acquittal dated 16.8.2023 passed in Summary Criminal Case No. 313 of 2009, passed by Judicial Magistrate, First Class at Palghar. By the said order, the Respondent nos. 1 to 3 are acquitted from the offence punishable under Section 4 read with Section 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

4. The Applicant filed complaint contending *inter alia* as under. That it is a registered partnership firm. That Respondent / Accused No.1 is construction firm and original accused Nos.2 to 5 are its partners. That grand father of partner of the complaint firm, was a tenant on the ground floor of building known as 'Hakimi Manzil' since 1920. That in the month of February 2006, Respondents - accused entered into an agreement with partner of the complainant to sell 548 sq. ft. carpet area on the ground floor of the new building for consideration of Rs.4,01,000/-. That instead of an agreement, a document titled as 'Samzota Karar' was executed whereunder the complainant has paid Rs.52,000/- in cash and the balance amount of Rs.4,11,000/- by cheques towards consideration and registration charges. However, registered agreement was not executed. Hence, legal notice was issued, but the demand was not complied. Therefore, the complaint is filed.

5. The statement of Respondents – accused was recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). The defence of the accused is that of denial and false implication.

6. The complainant examined himself as CW1 and one more witness as CW2 who claims to be co-tenant knowing the complainant.

7. Learned Magistrate who heard and tried the said case and was pleased to acquit the Respondents– accused as stated above.

8. Learned Counsel for the Applicant submitted that the variance in the name appearing in Samzota Karar and name of the

partnership firm of which he is partner could not have been held to be fatal to the complaint itself. He submitted that what ought to have been seen is that money was paid, which was beyond the statutory limit of 20% and therefore, registered agreement ought to have been executed, which having not been done, the ingredients of the offence are made out. He further submitted that the evidence of CW1 namely Mr. Mahendra Ratilal Patel who is partner of complainant-firm, ought to have been held sufficient to convict the accused.

9. On the other hand, learned Counsel for the Respondents-accused supported the impugned order contending *inter alia* that CW1 has utterly failed to established nexus or any authority on behalf of the entity whose name appears in the Samzota Karar, and therefore, there is serious doubt about the locus of CW1 or the complainant itself. He further submitted that in the statement under Section 313 of CrPC, the receipt of money is clearly denied and therefore, the ingredients have not been fulfilled. Therefore, the Respondents are rightly acquitted.

10. I have considered the rival submissions and perused the record.

11. It is not disputed that the document produced on record by CW1 titled as ‘Samzota Karar’ is executed in favour of an entity called 'M/s. Bhagwandas Khushaldas Patel', through its partners; however, the names of the partners are not mentioned in the said document. The name of the complainant is 'Bhagwandas Khushaldas'. CW1, who claims to be partner of 'M/s. Bhagwandas Khushaldas Partnership firm' has admitted in the cross-examination that the partnership deed of 'M/s.

Bhagwandas Khushaldas and Co.' is not filed on record. He has also admitted that the firm has not passed any resolution giving rights to him. In the cross-examination, he has stated that since he is an elder person he has the right. In the teeth of such variance in the name of the entity appearing in the 'Samzota Karar' and the name of the complainant, coupled with the said admissions, the learned Magistrate has rightly held that doubt is created whether the complainant was the proposed purchased as alleged.

12. Learned Magistrate, in paragraph no. 15 of the impugned order, has considered the certificate produced by the complainant issued by State of Bank (Exhibit 98), and has held that though it showed the debit entry from the account of M/s. Bhagwandas Khushaldas and Co. but it did not show that the amount was credited in favour of the accused. In short, learned Magistrate noted that there was no evidence showing credit in the account of the accused of the amount alleged to have been paid.

13. It is not disputed that the Civil Suit filed on behalf of M/s. Bhagwandas Khushaldas (firm) against the accused is dismissed on 17.12.2015 and the said dispute is stated to be pending in Appeal.

14. In the aforesaid facts and circumstances, and for the reasons indicated above, considering the nature of offence involved, the doubt expressed in the impugned order and the reasons stated for acquittal, cannot be faulted with. The impugned order has not resulted in any miscarriage of justice and it does not require reconsideration in Appeal.

15. No case for leave is made out.**Application is rejected**. It is clarified that the observations made in this order will not prejudice the parties in pending civil litigation.

(M.M. SATHAYE, J.)